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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 SIERRA HERNANDEZ,) No. CV 14-2401-AS
12)
13 Plaintiff,)
14 v.) MEMORANDUM OPINION AND ORDER OF
15) REMAND
16)
17 CAROLYN W. COLVIN,)
18 Acting Commissioner of the)
19 Social Security Administration,)
20)
21 Defendant.)
22)
23)
24)
25)
26)
27)
28)

18 PROCEEDINGS

19
20 On March 28, 2014, Plaintiff Sierra Hernandez filed a Complaint
21 seeking review of the denial of her application for supplemental
22 security income ("SSI"). (Docket Entry No. 3.) On April 9, 2014,
23 Plaintiff consented to proceed before a United States Magistrate
24 Judge. (Docket Entry No. 8.) Defendant consented on May 5, 2014.
25 (Docket Entry No. 10.) Defendant subsequently filed an Answer to the
26 Complaint and the Administrative Record ("A.R.") on August 11, 2014.
27 (Docket Entry Nos. 13, 14.) The parties then filed a Joint
28

1 Stipulation ("Joint Stip.") on October 14, 2014, setting forth their
2 respective positions regarding Plaintiff's claim. (Docket Entry
3 No. 15.) The Court has taken this matter under submission without
4 oral argument, and it is now before the Court for decision. See C.D.
5 Cal. L.R. 7-15.

6
7 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
8

9 On August 25, 2010, Plaintiff filed an application for SSI,
10 alleging disability beginning December 1, 2004. (A.R. 125-29.)
11 Plaintiff alleges disability after being diagnosed with Huntington's
12 disease and mild scoliosis. (A.R. 16-19.) Plaintiff was 19 years
13 old at the time she filed her application. (A.R. 125.)
14

15 Plaintiff's SSI claim was denied at the initial and
16 reconsideration levels. (A.R. 52-56.) On September 30, 2011,
17 Plaintiff requested a hearing before an Administrative Law Judge
18 ("ALJ"). (A.R. 69-74.) The ALJ, Eric V. Benham, held a hearing on
19 August 21, 2011. (A.R. 25-45.) Plaintiff and her mother, Gail
20 Fountain, appeared and testified at the hearing via video conference.
21 (A.R. 14, 25-45.) Vocational expert ("VE") Randi Landford-Hetrick
22 also testified at the hearing. (A.R. 25-45.)
23

24 The ALJ issued an unfavorable decision on September 21, 2012.
25 (A.R. 14-21.) The ALJ found that Plaintiff had severe impairments,
26 consisting of scoliosis of the back and Huntington's disease, but the
27 Huntington's disease was asymptomatic. (A.R. 16.) The ALJ then
28

1 determined that Plaintiff had the residual functional capacity
2 ("RFC") to perform light work. (Id.) The ALJ articulated additional
3 limitations as follows:

4 occasional difficulty getting along with co-
5 workers, supervisors or the public; is not
6 preclude [sic] from a normal workday or workweek;
7 has some difficulty with memory and carrying out
8 detailed work instructions; has some difficulty
9 with punctuality but would not be absent from
work for more than 1 day of work per month.

10 (A.R. 16-17.)
11

12 In determining Plaintiff's RFC, the ALJ rejected Plaintiff's
13 testimony and her mother's testimony concerning her subjective
14 symptoms. (A.R. 17-19.) The ALJ's adverse credibility finding was
15 based on a lack of corroborating objective medical evidence, a lack
16 of consistent medical treatment, and the ALJ's own observations of
17 Plaintiff at the hearing. (Id.)
18

19 Plaintiff has no past relevant work experience, so after
20 determining her RFC, the ALJ considered whether there are jobs that
21 exist in significant numbers in the national economy that Plaintiff
22 can perform. (A.R. 20.) The ALJ answered this inquiry affirmatively
23 by relying on the testimony of the VE, who testified that based on
24 Plaintiff's age, education, work experience, and RFC, she could
25 perform the work of a cleaner/housekeeper (DOT No. 323.687-014), a
26 vending machine operator (DOT No. 319.464-014), or a shoe packer/hand
27 packager (DOT No. 920.687.100). (A.R. 20, 40-44.) Accordingly, the
28

1 ALJ found that Plaintiff had not been disabled since the date of her
2 application for SSI benefits. (A.R. 20.)

3
4 Plaintiff requested that the Appeals Council review the ALJ's
5 unfavorable decision on November 12, 2012. (A.R. 10.) Her request
6 was denied on January 23, 2014. (A.R. 1-3.) The ALJ's decision then
7 became the final decision of the Commissioner, allowing this Court to
8 review the decision. See 42 U.S.C. § 405(g); 1383(c).

9
10 **PLAINTIFF'S CONTENTION**

11
12 Plaintiff contends that the ALJ erred in rejecting the testimony
13 of her subjective symptoms by failing to provide specific, clear and
14 convincing reasons supported by substantial evidence in the record.
15 (Joint Stip. 2.)

16
17 **STANDARD OF REVIEW**

18
19 This Court reviews the Administration's decision to determine
20 if: (1) the Administration's findings are supported by substantial
21 evidence; and (2) the Administration used proper legal standards.
22 Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996). "Substantial
23 evidence is more than a scintilla, but less than a preponderance."
24 Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995). To determine
25 whether substantial evidence supports a finding, "a court must
26 consider [] the record as a whole, weighing both evidence that
27 supports and evidence that detracts from the [Commissioner's]

1 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998).
2 As a result, "[i]f evidence can reasonably support either affirming
3 or reversing the ALJ's conclusion, [a] court may not substitute its
4 judgment for that of the ALJ." Batson v. Comm'r of Soc. Sec. Admin.,
5 359 F.3d 1190, 1196 (9th Cir. 2004).

6
7 **APPLICABLE LAW**
8

9 "The Social Security Act defines disability as the 'inability to
10 engage in any substantial gainful activity by reason of any medically
11 determinable physical or mental impairment which can be expected to
12 result in death or which has lasted or can be expected to last for a
13 continuous period of not less than 12 months.'" Webb v. Barnhart,
14 433 F.3d 683, 686 (9th Cir. 2005) (quoting 42 U.S.C. § 423(d)(1)(A)).
15 The ALJ follows a five-step, sequential analysis to determine whether
16 a claimant has established disability. 20 C.F.R. § 404.1520.

17
18 At step one, the ALJ determines whether the claimant is engaged
19 in substantial gainful employment activity. Id. § 404.1520(a)(4)(i).
20 "Substantial gainful activity" is defined as "work that . . .
21 [i]nvolves doing significant and productive physical or mental
22 duties[] and . . . [i]s done (or intended) for pay or profit." Id.
23 §§ 404.1510, 404.1572. If the ALJ determines that the claimant is
24 not engaged in substantial gainful activity, the ALJ proceeds to step
25 two which requires the ALJ to determine whether the claimant has a
26 medically severe impairment or combination of impairments that
27 significantly limits her ability to do basic work activities. See

1 id. § 404.1520(a)(4)(ii); see also Webb, 433 F.3d at 686. The
2 "ability to do basic work activities" is defined as "the abilities
3 and aptitudes necessary to do most jobs." 20 C.F.R. § 404.1521(b);
4 Webb, 433 F.3d at 686. An impairment is not severe if it is merely
5 "a slight abnormality (or combination of slight abnormalities) that
6 has no more than a minimal effect on the ability to do basic work
7 activities." Webb, 433 F.3d at 686.

8
9 If the ALJ concludes that a claimant lacks a medically severe
10 impairment, the ALJ must find the claimant not disabled. Id.;
11 20 C.F.R. § 1520(a)(ii); Ukolov v. Barnhart, 420 F.3d 1002, 1003 (9th
12 Cir. 2005) (holding that the ALJ need not consider subsequent steps
13 if there is a finding of "disabled" or "not disabled" at any step).

14
15 However, if the ALJ finds that a claimant's impairment is
16 severe, then step three requires the ALJ to evaluate whether the
17 claimant's impairment satisfies certain statutory requirements
18 entitling her to a disability finding. Webb, 433 F.3d at 686. If
19 the impairment does not satisfy the statutory requirements entitling
20 the claimant to a disability finding, the ALJ must determine the
21 claimant's RFC, that is, the ability to do physical and mental work
22 activities on a sustained basis despite limitations from all her
23 impairments. 20 C.F.R. § 416.920(e).

24
25 Once the RFC is determined, the ALJ proceeds to step four to
26 assess whether the claimant is able to do any work that she has done
27 in the past, defined as work performed in the last fifteen years

1 prior to the disability onset date. If the ALJ finds that the
2 claimant cannot perform her past relevant work or does not have any
3 past relevant work, the ALJ proceeds to step five to determine
4 whether – taking into account the claimant’s age, education, work
5 experience, and RFC – there is any other work that the claimant can
6 do and if so, whether there are a significant number of such jobs in
7 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th
8 Cir. 1999); 20 C.F.R. § 404.1520(a)(4)(iii)-(v). The claimant has
9 the burden of proof at steps one through four, and the Commissioner
10 has the burden of proof at step five. Tackett, 180 F.3d at 1098.

11 12 DISCUSSION

13
14 After consideration of the record as a whole, the Court finds
15 that the ALJ’s findings are *not* supported by substantial evidence or
16 free from material legal error.¹ For the reasons discussed below,
17 the case is remanded under sentence four of 42 U.S.C. § 405(g).

18 19 A. The ALJ Erred in Evaluating Plaintiff’s Credibility

20
21 While the ALJ found that Plaintiff’s medically determinable
22 impairments – Huntington’s disease and scoliosis – could reasonably
23 be expected to cause Plaintiff’s alleged symptoms, the ALJ determined

24
25 ¹ The harmless error rule applies to the review of administrative
26 decisions regarding disability. See McLeod v. Astrue, 640 F.3d 881,
27 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676, 679 (9th
28 Cir. 2005) (stating that an ALJ’s decision will not be reversed for
errors that are harmless).

1 that Plaintiff's statements concerning the intensity, persistence,
2 and limiting effects of her alleged symptoms were not credible.
3 (A.R. 18.) Of particular importance to this Court's review is the
4 ALJ's finding that Plaintiff was "essentially asymptomatic" with
5 respect to her Huntington's disease. (Id.) The ALJ's credibility
6 assessment was based on a lack of corroborating objective medical
7 evidence, Plaintiff's conservative treatment, and his own
8 observations of Plaintiff at the hearing. (A.R. 18-19.)
9

10 Plaintiff argues that the ALJ failed to identify valid reasons
11 for rejecting her and her mother's testimony about her symptoms,
12 emphasizing the testimony related to her Huntington's disease.
13 (Joint Stip. 4-9.) As set forth below, the Court agrees that the ALJ
14 failed to state legally sufficient reasons for his adverse
15 credibility finding on the symptoms of Plaintiff's Huntington's
16 disease. The Court finds that the ALJ's credibility assessment
17 regarding the symptoms of Plaintiff's scoliosis is supported by
18 substantial evidence.
19

20 1. Legal Standard
21

22 An ALJ's assessment of symptom severity and claimant credibility
23 is entitled to "great weight." See Anderson v. Sullivan, 914 F.2d
24 1121, 1124 (9th Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th
25 Cir. 1985). "[T]he ALJ is not required to believe every allegation
26 of disabling pain, or else disability benefits would be available for
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1 the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A)."
2 Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012).

3
4 In evaluating a claimant's subjective symptom testimony, the ALJ
5 engages in a two-step analysis. Lingenfelter v. Astrue, 504 F.3d
6 1028, 1035-36 (9th Cir. 2007). "First, the ALJ must determine
7 whether the claimant has presented objective medical evidence of an
8 underlying medical impairment which could reasonably be expected to
9 produce the pain or other symptoms alleged." Id. at 1036 (internal
10 quotations and citation omitted). If such objective medical evidence
11 exists, the ALJ may not reject the claimant's testimony "simply
12 because there is no showing that the impairment can reasonably
13 produce the degree of symptom alleged." Smolen, 80 F.3d at 1282
14 (emphasis in original). Instead, in finding the claimant's
15 subjective complaints not credible, the ALJ must make "specific,
16 cogent" findings that support the conclusion. Lester v. Chater,
17 81 F.3d 821, 834 (9th Cir. 1995) (quoting Rashad v. Sullivan,
18 903 F.2d 1229, 1231 (9th Cir. 1990)). Absent affirmative evidence of
19 malingering, the ALJ's reasons for rejecting the claimaint's
20 testimony must be "clear and convincing." Lester, 81 F.3d at 834.

21 22 2. Objective Medical Evidence

23
24 Plaintiff argues that the ALJ improperly relied on objective
25 medical evidence to discount her and her mother's testimony about her
26 symptoms. (See Joint Stip. 4-6.) Plaintiff points out that she is
27 not required to produce objective medical evidence of the severity of

1 her symptoms. Smolen, 80 F.3d at 1282 (holding that a claimant need
2 only show that her impairment "could reasonably have caused some
3 degree of the symptom"). Moreover, a lack of corroborating medical
4 evidence cannot form the sole basis for discounting her testimony
5 regarding the severity of her symptoms. Burch v. Barnhart, 400 F.3d
6 676, 681 (9th Cir. 2005) (holding that a lack of medical evidence may
7 only be a factor in an ALJ's credibility analysis). Although the ALJ
8 found that Plaintiff's testimony was "generally consistent" with the
9 RFC limitations, Plaintiff argues that her testimony was not at all
10 consistent. (Joint Stip. 4.)
11

12 The ALJ cited an absence of objective medical evidence in giving
13 "minimal weight" to the testimony from Plaintiff and her mother about
14 "the frequency, severity, and duration of her Huntington's disease,
15 tremors, back pain, depression, decreased memory, and cognitive
16 slowing." (A.R. 18.) To support this conclusion, the ALJ discussed
17 at length the medical evidence from Dr. John Sedgh – an internal
18 medicine doctor who performed a consultative evaluation – and a State
19 Agency medical consultant. (A.R. 18-19.) However, the ALJ's
20 discussion of this medical evidence was mostly limited to the
21 physical symptoms presented by Plaintiff, as opposed to mental or
22 behavioral symptoms.
23

24 For example, as described by the ALJ, Dr. Sedgh and the State
25 Agency medical consultant opined that Plaintiff had a limited range
26 of motion of the back, but could still lift and carry 10 pounds
27
28

1 frequently and 20 pounds occasionally.² (A.R. 18-19, 194-98,
2 214-21.) This medical evidence, as described by the ALJ, constitutes
3 a specific, clear and convincing reason for rejecting Plaintiff's
4 testimony about the severity and limitations of her back pain. See
5 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (holding
6 that the opinions of examining doctors and medical experts can serve
7 "as substantial evidence supporting the ALJ's findings with respect
8 to [the claimant's] physical impairment and exertional limitations").
9 But neither doctor addresses the severity or significance of
10 Plaintiff's alleged mental-health and behavioral problems; thus, the
11 evidence does little to discredit the testimony from Plaintiff and
12 her mother about Plaintiff's mental and behavioral health symptoms.
13 (See A.R. 29-40.)
14

15 At the hearing, Plaintiff testified to having trouble with her
16 memory, having difficulty speaking to people, feeling withdrawn, and
17 being clumsy. (A.R. 29-30.) Plaintiff's mother testified that her
18 daughter will "fly into a sudden rage" two to four times a day.
19 (A.R. 35-36.) Plaintiff also sleeps into the late afternoon and is
20 generally apathetic. (A.R. 35.) Plaintiff bolsters her and her
21 mother's testimony with reference to medical reports from UCLA
22 Medical Center from 2006 to 2008. (See Joint Stip. 3; A.R. 225-38.)
23 The 2006 Direct DNA Test for Huntington Disease Mutations ("the DNA
24 Test") indicates "Clinical Diagnosis: Symptomatic." (A.R. 226.)
25

26 ² The State Agency medical consultant first assessed that
27 Plaintiff could perform medium work, but as the ALJ pointed out, that
28 assessment was later adjusted to light work. (See A.R. 19.)

1 Moreover, also contained in the record are summaries of Plaintiff's
2 visits to Dr. Yvette Bordelon at UCLA between 2006 and 2008.
3 (A.R. 229-38.) In the summaries, Dr. Bordelon discusses Plaintiff's
4 Huntington's disease, clearly indicating her conclusion that
5 Plaintiff's behavioral problems may be attributable to Huntington's
6 disease. (Id.)

7
8 The Court finds that the ALJ erred in failing to specifically
9 address the alleged severity of these behavioral symptoms, and
10 instead, formed conclusions about Plaintiff's Huntington's disease
11 that are unsupported by the record. The ALJ found as follows:

12
13 It is noted that Huntington's disease is a fatal
14 condition but usually does not begin to affect
15 the nervous system until ages 35 to 50. However,
16 the claimant is only 21 years old. Moreover, the
17 only symptom evident when examined by the
18 consultative examiner was a slight tremor of the
19 hands. In addition, her neurological examination
20 was normal. Exh. 3F. The claimant was
21 essentially asymptomatic at this time and the
22 undersigned finds no functional limitations due
23 to this genetic condition.

24 (A.R. 18.)

25 The ALJ does not provide evidentiary support for the medical
26 conclusion that Huntington's disease "usually does not begin to
27 affect the nervous system until ages 35 to 50." (See A.R. 18.)
28 While the ALJ's finding may be true, the Court cannot find evidence
from a medical professional in the record to support it. Moreover,
the ALJ entirely fails to address the issue of juvenile-onset

1 Huntington's disease, which is Plaintiff's apparent diagnosis. (See
2 A.R. 225-38.)

3
4 In addition, the ALJ discredited Plaintiff's testimony about
5 symptoms she exhibited of Huntington's disease by questioning the DNA
6 Test. The ALJ interpreted this document as ambiguous, and stated
7 that it "revealed findings which identified the claimant as either a
8 Huntington disease patient or a presymptomatic carrier." (A.R. 18.)
9 In so doing, the Court finds that the ALJ essentially admitted to an
10 inability to interpret the DNA Test. (See id. ("It was unclear if
11 the claimant is a pre-symptomatic carrier.").) Therefore, the ALJ
12 erred in using this document to discredit Plaintiff's testimony
13 without the help of a qualified medical professional to explain the
14 meaning of the DNA Test.

15
16 Webster's New World Medical Dictionary defines Huntington's
17 disease as,

18 a genetic degenerative disorder of the brain
19 cells characterized by mental and physical
20 deterioration that leads to death. Abbreviated
21 HD. Although HD is usually an adult-onset
22 disorder, it can affect children as well. The
23 average survival time is 15 to 18 years after the
24 onset of symptoms. Mood disturbance is usually
25 the first symptom seen, with bipolar disorder-
like mood swings that may include mania,
depression, extreme irritability or angry
outbursts and psychosis. . . .

26 WEBSTER'S NEW WORLD MEDICAL DICTIONARY 204 (3d ed. 2008). Plaintiff and her
27 mother testified at length about her behavioral problems, which could

1 reasonably be interpreted as the first symptom of Huntington's
2 disease. (See A.R. 29-40.) Dr. Bordelon – Plaintiff's treating
3 doctor at UCLA Medical Center – appeared to consider her behavior a
4 symptom as far back as 2006. (A.R. 229-38.) Yet the ALJ, in issuing
5 his unfavorable decision, made no specific findings with regard to
6 this alleged symptom or its severity and provided no additional
7 detail as to why he discredited Plaintiff's, or her mother's,
8 testimony about behavioral problems. The ALJ made a passing
9 reference to Dr. Sedgh's consultative examination, noting that the
10 "neurological examination was normal." (A.R. 18, 197-98.) However,
11 Dr. Sedgh's short, cursory evaluation appears limited to testing her
12 physical responses to stimuli and does not discuss mental-health or
13 behavioral problems. (See A.R. 197-98.)

14
15 The Court finds that the ALJ's reliance on the objective medical
16 evidence in this case was not a clear and convincing reason for
17 discounting Plaintiff's credibility with respect to the severity of
18 her symptoms of Huntington's disease. Thus, the ALJ erred in failing
19 to provide reasons for his adverse credibility findings and failing
20 to develop the evidentiary record. Moreover, while the ALJ did cite
21 an overall lack of corroborating objective medical evidence with
22 respect to all of Plaintiff's alleged symptoms, the absence of
23 corroborating objective medical evidence cannot be the sole reason
24 for discrediting Plaintiff's testimony. See Burch, 400 F.3d at 681.
25 As discussed below, because the Court finds the other reasons given
26 for discounting Plaintiff's credibility are also legally
27 insufficient, the matter must be remanded.

1 insufficient with respect to Plaintiff's Huntington's disease.³ The
2 ALJ's findings lack the requisite specificity and the evidentiary
3 record is undeveloped regarding Plaintiff's treatment for
4 Huntington's disease. The testimony of Plaintiff's mother is the
5 only evidence of a course of treatment for Huntington's disease.
6 (See A.R. 34.) If in fact there is no treatment for Huntington's
7 disease, as Plaintiff's mother testified, then a lack of treatment
8 can hardly serve as a valid basis for discrediting Plaintiff's
9 testimony of her symptoms.

10
11 In addition, Plaintiff's mother also testified that Plaintiff
12 tried "about six times" to get psychiatric help at the county mental
13 health center, but kept getting turned away. (A.R. 34-35.)
14 Plaintiff's repeated attempts at psychiatric treatment do not
15 constitute "a lack of consistent treatment" or "conservative
16 treatment." See Regenitter v. Comm'r of Soc. Sec. Admin., 166 F.3d
17 1294, 1299-1300 (9th Cir. 1999) ("[W]e have particularly criticized
18 the use of a lack of treatment to reject mental complaints both
19 because mental illness is notoriously underreported and because it is
20 a questionable practice to chastise one with a mental impairment for
21 the exercise of poor judgment in seeking rehabilitation.").

22
23 ³ To the extent that Plaintiff challenges the ALJ's conservative-
24 treatment reasoning as to the severity of her pain and scoliosis
25 symptoms, the Court is satisfied that the ALJ stated legally
26 sufficient reasons for rejecting Plaintiff's testimony regarding the
27 severity and disabling effects of her scoliosis symptoms. The ALJ
28 made specific findings, referencing the two progress reports from
2010 as well as the conservative course of medications that Plaintiff
was taking to manage her pain symptoms. (See A.R. 18.)

1 Accordingly, the Court finds that the ALJ's reliance on
2 Plaintiff's lack of treatment for Huntington's disease was neither a
3 specific nor clear and convincing reason for rejecting testimony
4 about Plaintiff's symptoms.

5
6 4. The ALJ's Observations at the Hearing
7

8 The ALJ also discredited Plaintiff's testimony based on his
9 personal observations at the hearing. (A.R. 19.) The ALJ noted that
10 "her verbal responses and overall demeanor were not suggestive of a
11 person who is experiencing disabling limitations." (Id.)
12

13 The Ninth Circuit has repeatedly condemned so-called "sit and
14 squirm" jurisprudence. Perminter v. Heckler, 765 F.2d 870, 872 (9th
15 Cir. 1985) ("Denial of benefits cannot be based on the ALJ's
16 observation of [the claimant], when [the claimant's] statements . . .
17 are supported by objective evidence."). But inclusion of an ALJ's
18 personal observations does not necessarily render the decision
19 improper. See Verdugo v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999).
20

21 Here, the ALJ's personal observations of Plaintiff are
22 troubling. Plaintiff and her mother appeared at the hearing via
23 video conference. (A.R. 14.) Yet in describing Plaintiff's
24 demeanor, the ALJ stated "she was able to enter and exit the hearing
25 room without much difficulty." (A.R. 19.) The ALJ also noted that
26 Plaintiff was able to "answer questions quite thoroughly and
27 clearly." (Id.) The hearing transcript, however, tells another
28

1 story. Plaintiff had difficulty explaining herself and her symptoms
2 throughout her testimony, and she ultimately turned the testimony
3 over to her mother. (See A.R. 32 ("You know, my mom could tell you a
4 lot better than I can, my mom, my mom could tell you a lot better
5 than I can.").) The Court finds that the ALJ's personal observations
6 were not supported by substantial evidence and therefore do not
7 constitute a clear and convincing reason for discounting Plaintiff's
8 symptom testimony.

9
10 **B. Remand is Appropriate**

11
12 The decision whether to remand for further proceedings or order
13 an immediate award of benefits is within the district court's
14 discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000).
15 Where no useful purpose would be served by further administrative
16 proceedings, or where the record has been fully developed, it is
17 appropriate to exercise this discretion to direct an immediate award
18 of benefits. Id. at 1179 ("[T]he decision of whether to remand for
19 further proceedings turns upon the likely utility of such
20 proceedings.").

21
22 When the credibility of a claimant's subjective-symptom
23 testimony is at issue, the Ninth Circuit has developed a three-part
24 standard. Garrison v. Colvin, 759 F.3d 995, 1019 (9th Cir.
25 July 14, 2014). Courts should credit as true the claimant's
26 testimony and remand for an immediate award of benefits only where,
27
28

1 (1) the record has been fully developed and
2 further administrative proceedings would serve no
3 useful purpose; (2) the ALJ has failed to provide
4 legally sufficient reasons for rejecting evidence
5 . . . ; and (3) if the improperly discredited
evidence were credited as true, the ALJ would be
required to find the claimant disabled on remand.

6 Id. However, where, as here, the circumstances of the case suggest
7 that further administrative review could remedy the ALJ's errors or
8 "the record as a whole creates serious doubt that a claimant is, in
9 fact, disabled," remand is appropriate. Id. at 1021; see also
10 McLeod, 640 F.3d at 888 (9th Cir. 2011); Harman, 211 F.3d at 1179-81.

11
12 The Court has determined that the ALJ erred in rejecting
13 Plaintiff's credibility based on the objective medical evidence and
14 lack of treatment for Plaintiff's Huntington's disease. The reasons
15 provided by the ALJ lacked specificity and suffered from an
16 undeveloped evidentiary record. On remand, the ALJ should reassess
17 Plaintiff's RFC after revisiting his credibility determination on the
18 limiting effects of Plaintiff's Huntington's disease symptoms,
19 specifically the limitations posed by her alleged mental-health and
20 behavioral problems.

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1 **CONCLUSION**

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3 For the reasons discussed above, this matter is remanded for

4 further administrative action consistent with this Opinion.

5

6 LET JUDGMENT BE ENTERED ACCORDINGLY.

7

8 Dated: December 29, 2014.

9 /s/_____

10 ALKA SAGAR

11 UNITED STATES MAGISTRATE JUDGE

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